UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

BRONSON NAHALE BASCAR, Plaintiff, vs. STATE OF HAWAII, PUBLIC SAFETY DEPT., LT. GAIL MERCIVICH, Defendants.	CIV. NO. 19-00584 LEK-KJM

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Before the Court are: pro se Plaintiff Bronson Nahale Bascar's ("Plaintiff") Motion for Summary Judgment ("Plaintiff's Motion"), filed on May 21, 2020; and Defendants State of Hawai`i Department of Public Safety ("DPS") and Lieutenant Gail Mirkovich's ("Mirkovich" and collectively "Defendants") Motion for Summary Judgment ("Defendants' Motion"), filed on November 30, 2020. [Dkt. nos. 26, 39.] Defendants filed their memorandum in opposition to Plaintiff's Motion on July 20, 2020, and Plaintiff filed his reply in support of his motion on July 30, 2020. [Dkt. nos. 31, 32.] Pursuant to an October 23, 2020 entering order, on November 4, 2020, Defendants filed a supplement to their memorandum in opposition to Plaintiff's Motion. [Dkt. nos. 37, 38.] Plaintiff filed his memorandum in opposition to Defendants' Motion on December 14, 2020. [Dkt.

no. 44.] The Court finds these matters suitable for disposition without a hearing pursuant to Rule LR7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules").

On January 28, 2021, an entering order was issued informing the parties of this Court's rulings on the motions. [Dkt. no. 46.] The instant Order supersedes that entering order. For the reasons set forth below, Plaintiff's Motion is denied, and Defendants' Motion is granted. Defendants are entitled to summary judgment in their favor as to all of Plaintiff's remaining claims in this case.

BACKGROUND

On October 25, 2019, Plaintiff, who was incarcerated at the Halawa Correctional Facility ("HCF") at the time,[1] filed his Prisoner Civil Rights Complaint ("Complaint"), arising from events that occurred while he was being held at Maui Community Correctional Center ("MCCC") as a pretrial detainee. [Dkt. no. 1.]

Counts I and II of the Complaint allege claims under 42 U.S.C. § 1983 based on violations of Plaintiff's Fourteenth Amendment rights, which he asserts relate to MCCC disciplinary

[1] Plaintiff is currently incarcerated at Saguaro Correctional Center. [Pltf.'s notice of transfer & change of mailing address, filed 8/24/20 (dkt. no. 36).]

proceedings and the resulting sanction. Plaintiff states that, on April 22, 2019, Mirkovich,[2] acting as a DPS disciplinary hearing officer, found him guilty of a misconduct violation as a result of property damage at MCCC. Plaintiff was charged $2,716 for the damage, and the amount was to be deducted from his suspended trust account. Plaintiff alleges the cost of the damage at MCCC was split equally among prisoners housed in Modules A and B. However, according to Plaintiff, Module A, where he was housed, had much less damage than Module B had. Plaintiff complains that he was charged the same amount as inmates in Module B, although he could not have caused the same amount of property damage, and he was not shown any proof of the amount of property damage that Module A sustained. [Complaint at pgs. 5-6.] Count III asserts a § 1983 claim for violation of Plaintiff's Fourteenth Amendment rights, arising from an incident of alleged retaliation on March 11, 2019. [Id. at pg. 7.] The Request for Relief section of the Complaint states, in pertinent part: "I would like to adjust the Restitution [sic], be allowed to shown [repaid] damages I was responsible for, or have a trial being I was pretrial." [Id. at pg. 8.]

[2] Mirkovich is erroneously identified in the Complaint as "Lt. Mercivich - Gail Mercivich." See Complaint at ¶ A.4; Defs.' answer to Pltf.'s Complaint ("Answer"), filed 1/24/20 (dkt. no. 21), at pg. 2.

In a screening order, this Court concluded that Counts I and II stated a claim against Defendants, but that Count III failed to state a colorable claim for relief. [Order Dismissing Complaint in Part and Directing Service, filed 11/22/19 (dkt. no. 6) ("11/22/19 Order"), at 5, 7.] Count III was dismissed with leave to amend,[3] and service was ordered as to Counts I and II. [Id. at 7.]

I. Plaintiff's Motion

In his motion, Plaintiff restates the facts alleged in the Complaint, and he cites case law, which he argues supports his position that the disciplinary charge of $2,716 constituted a taking without due process, in violation of his Fourteenth Amendment rights. [Pltf.'s Motion at 1-2.] He states the charge prevents him from being able to purchase items from the commissary, constituting an additional punishment that is cruel and unusual. He also states that it will prevent him from buying items that he needs for employment, once he is allowed to participate in the work furlough program. [Id. at 1.] Further, Plaintiff contends he was denied due process because: "[t]here was . . . no restitution hearing with evidence supporting the

[3] Plaintiff was granted leave to amend Count III by December 20, 2019. [11/22/19 Order at 7.] Plaintiff did not file an amended complaint by the deadline, nor did he request an extension of the deadline. Count III therefore is no longer part of this case.

amount required for restitution & value of property"; and the restitution payments "are charged to [his] personal account[, n]ot the restitutional area." [Id. at 2 (citations omitted).]

II. Defendant's Motion

Defendants present evidence that, on March 11, 2019, a riot occurred at MCCC, and Modules A and B sustained significant damage as a result of the riot and the fire started during the riot. At the time of the riot, Plaintiff was housed in Module A as a pretrial detainee. Plaintiff and several other inmates were charged with misconduct because of their respective roles in the riot. [Defs.' concise statement of facts in supp. of Defs.' Motion ("Defs.' CSOF"), filed 11/30/20 (dkt. no. 40), Decl. of Gail Mirkovich ("Mirkovich Decl.") at ¶¶ 4-6.[4]] An Adjustment Committee met to consider the charges against Plaintiff, and Mirkovich was the chairperson of that committee. Id. at ¶ 4; see also id., Exh. A (DPS Notice of Report of Misconduct and Hearing).[5] Plaintiff was charged with:

> 6(6) Setting a fire.
>
> 6(7) Destroying, altering or damaging government property or the property of

[4] Mirkovich works at MCCC and is a DPS Adult Corrections Officer V. [Mirkovich Decl. at ¶ 1.]

[5] The notice section of the document was prepared on March 19, 2018, and Plaintiff signed the document on March 25, 2019, acknowledging receipt of the notice. The disposition section was signed by Mirkovich on April 22, 2019. [Mirkovich Decl., Exh. A.]

> another person resulting in damage of $1,000 or more, or damage to irreplaceable documents.
>
> 6(11) Rioting
>
> 6(12) Encouraging others to riot.
>
> 6(13) The use of force or violence resulting in the obstruction, hindrance, or impairment of the performance of a correctional function by a public servant, which requires facts related to the conduct and does not require that the conduct was a intentional act.
>
> 6(14) Possession, tampering, compromising or manufacturing of any security equipment or locking mechanism, such as, but not limited, to handcuffs, handcuff keys, or any too designed to lock or unlock any type of locking mechanism.

[Mirkovich Decl., Exh. A (Defs.' emphasis omitted).] The notice stated a hearing would be held at HCF on March 28, 2019 ("Adjustment Hearing"). [Id.]

Plaintiff pled guilty to some of the charges, and he pled not guilty to the other charges. As to the charges to which he pled not guilty, the Adjustment Committee found him guilty based on the evidence. [Id.; Mirkovich Decl. at ¶ 9.] A total of twenty MCCC inmates in Modules A and B were found guilty of causing property damage related to the riot. [Mirkovich Decl. at ¶ 10.] The Adjustment Committee determined that Plaintiff should be required to pay restitution because of his role in the riot, but the committee did not determine the

amount of the restitution. It was the MCCC administration and DPS that decided the twenty inmates who were found guilty of misconduct should share the total repair cost equally. The $2,716 restitution amount assessed against Plaintiff was determined using that formula. Id.; see also Mirkovich Decl., Exh. A ("RESTITUTION IN THE AMOUNT OT $2716.00 FURTHER RESTITUTION AMOUNTS WILL BE DETERMINED BY MCCC)" (capitalization in original) (Defs.' emphasis and annotations omitted)). The disposition section also stated: "You have 14 days to grieve upon receipt of Disposition." [Mirkovich Decl., Exh. A (Defs.' emphasis omitted).] Mirkovich states there was no denial of a "restitutional hearing" as Plaintiff alleges because DPS does not provide hearings addressing only restitution. The Adjustment Hearing that was held and the three-step grievance process, which Plaintiff also utilized, are the processes that are available to all inmates to address similar issues. [Mirkovich Decl. at ¶ 12.]

Plaintiff submitted a DPS Administrative Remedy Form, dated May 31, 2019, at HCF to appeal the imposition of restitution. The form stated that he attempted an informal resolution with the grievance office on May 6, 2019. [Defs.'

CSOF, Decl. of Shari Kimoto ("Kimoto Decl."), Exh. B.[6]] In his appeal: Plaintiff identified specific property damage caused during the riot that he alleged he was not responsible for; Plaintiff asserted MCCC did not take his evidence into consideration; Plaintiff contested the fact that the inmates who were found guilty were assessed the same restitution amount, regardless of whether they were in Module A or Module B; and Plaintiff argued a court order was required to impose a restitution order against him as a pretrial detainee. Plaintiff therefore argued the imposition of restitution violated his due process rights, his right to be free from cruel and unusual punishment, and his right to be presumed innocent until proven guilty in a court of law. [Id.]

Ms. Kimoto signed the Resolution section of the form on July 11, 2019. [Id.; Kimoto Decl. at ¶ 3.] It states:

> The following is in response to your step II grievance appeal. PSD Policy COR 13.03 states that formal rules of evidence shall not apply. The charge is supported by a preponderance of evidence, which should not be confused with the criminal trial standard of beyond a reasonable doubt. The Adjustment Hearings Officer may rely on any form of evidence, documents, testimonies and inmate/staff reports, which it believes is reliable. You were afforded an opportunity to appear at your misconduct hearing, respond to your misconduct, explain what happened, and

[6] Shari Kimoto is the DPS Corrections Program Division Administrator. During the events at issue in in this case, she was the DPS Acting Institutions Division Administrator. [Kimoto Decl. at ¶ 1.]

> provide any additional information to support your story. Your guilty finding was based on staff reports. Your misconduct stands. Your grievance is denied.
>
> In accordance with P&P COR.12.03.10.6, this decision is final and the ultimate recourse available within the administrative remedy process.

[Kimoto Decl., Exh. B (Defs.' emphasis omitted).]

After the filing of this action, MCCC responded to Plaintiff's request to verify the $2,716.00 restitution amount charged against him and to his argument that the damages to Module A were not as extensive as the damages to Module B. [Defs.' CSOF, Decl. of Deborah Taylor ("Taylor Decl."), Exh. C (letter dated 2/10/20 to Plaintiff from Deborah Taylor ("2/10/20 Letter")).[7]] Plaintiff was informed that, after the imposition of the $2,716.00 amount, MCCC was able to determine the cost of the repairs attributable to only Module A - $19,785.65. [Id.] The misconduct hearings identified three inmates, including Plaintiff, who were found to have participated in the "disturbance in Module A" and who were ordered to pay restitution to MCCC. [Id.] Plaintiff's restitution amount, and that of the other two inmates, was revised from $2,7610.00 to $6,595.20. [Id.]

[7] Deborah Taylor has been the Warden at MCCC since August 2018. [Taylor Decl. at ¶ 1.]

Warden Taylor sent Plaintiff another letter, dated May 12, 2020 ("5/12/20 Letter"), noting that Plaintiff had not responded to the 2/10/20 Letter. [Taylor Decl., Exh. D (5/12/20 Letter).] The 5/12/20 Letter reiterated the information regarding the increase in the restitution amount. Warden Taylor also stated Plaintiff could write to her to request the documentation which supported the revised $6,595.00 restitution amount. [Id.] She stated: "If you fail to respond by May 25, 2020, PSD will assume that you agree that you owe $6,595.00 and do not need to see the supporting documentation." [Id.] Warden Taylor did not receive any request from Plaintiff to see the documentation. [Taylor Decl. at ¶ 5.]

Plaintiff states he witnessed the events at the riot, and more than three people in Module A were involved. He does not dispute that only three were found guilty. [Mem. in opp. to Defs.' Motion at 1.] Plaintiff argues splitting the repair costs among the three inmates without evidence of who caused what specific property damage, including whether any damage was caused by the inmates who were found not guilty, violates his right to due process. [Id. at 1-2.] Plaintiff states he "didn't damage allot [sic] of the thing that were broken & damaged." [Id. at 2.] Plaintiff argues he should not have been found guilty of setting a fire because he "had nothing to do with setting fire damaging locks, ect. [sic]," and he argues

that he was not shown evidence at the Adjustment Hearing. [Id.] Further, Plaintiff argues that, at the adjustment hearing, there was no evidence supporting the $2,716 amount imposed. [Id. at 3.] As to the twenty inmates, including himself, who were assessed $2,716, Plaintiff alleges none was "given a restitutional hearing." [Id.] Plaintiff argues that, when MCCC increased his restitution amount to $6,595.20, it still did not provide him with documentation supporting the amount. He argues he should not have been required to respond to the 5/12/20 Letter to obtain the documentation because it was obvious that he wanted to obtain the documentation. Plaintiff argues the law requires that he be given a hearing where DPS must establish the specific amount of damages that he was responsible for. [Id. at 4-5.]

DISCUSSION

I. Preliminary Issues

Counts I and II both allege claims pursuant to § 1983, which states, in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

This district court has recognized that "states and state agencies are not 'persons' subject to suit for money damages under § 1983." Lauro v. Hawai`i, CIV. NO. 19-00633 JAO-KJM, 2020 WL 608276, at *5 (D. Hawai`i Feb. 7, 2020) (citing Will v. Mich. Dep't of State Police, 491 U.S. 58, 65, 71 (1989)), *appeal dismissed*, No. 20-15480, 2020 WL 5544324 (9th Cir. July 6, 2020). Further, "[t]he Eleventh Amendment bars suit in federal court against a state or state agencies absent a valid abrogation of immunity by Congress or an express waiver of immunity by the State." Id. (citing Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 267-268 (1997); Edelman v. Jordan, 415 U.S. 651, 653 (1974); Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993)).[8]

A state official sued in his individual capacity is a "person" for purposes of § 1983. Hafer v. Melo, 502 U.S. 21, 23 (1991). A state official sued in his official capacity is only considered a "person" for purposes of a "suit under § 1983 only 'for prospective declaratory and injunctive relief . . . to enjoin an alleged ongoing violation of federal law.'" Lauro, 2020 WL 608276, at *5 (some citations omitted) (quoting Wilbur v. Locke, 423 F.3d 1101, 1111 (9th Cir. 2005), *abrogated on*

[8] Edelman has been overruled on other grounds by Will, 491 U.S. 58. See, e.g., Soderstrom v. Ocampo, Case No. SACV 19-422 JVS(KESx), 2019 WL 8014552, at *10 (C.D. Cal. June 17, 2019).

other grounds by Levin v. Commerce Energy, Inc., 560 U.S. 413 (2010)). Further, the Eleventh Amendment does not preclude a suit for damages against a state official sued in his individual capacity, Hafer, 502 U.S. at 30–31, and it does not preclude a suit for prospective declaratory and injunctive against a state official sued in his official capacity, Doe v. Regents of the Univ. of Cal., 891 F.3d 1147, 1153 (9th Cir. 2018).

Although the pleading form allowed Plaintiff to specify whether Mirkovich was being sued in her individual capacity, her official capacity, or both, Plaintiff did not check either option. [Complaint at pg. 2.] Because he is pleading pro se, Plaintiff's pleadings must be liberally construed. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). The Complaint is therefore liberally construed as asserting claims against Mirkovich in her individual capacity and her official capacity.

Although Defendants asserted Eleventh Amendment immunity as a defense in their Answer, [Answer at 3, THIRD DEFENSE,] neither Defendants memorandum in opposition to Plaintiff's Motion nor Defendants' Motion raises an Eleventh Amendment argument. However, because Defendants are entitled to summary judgment on other grounds, it is not necessary for this Court to address whether Defendants have waived their Eleventh

Amendment immunity in this case. The Court now turns to the merits of Plaintiff's claims.

II. Plaintiff's Claims

This Court has construed Counts I and II as alleging that the imposition of restitution for property damage caused during the MCCC riot violated Plaintiff's Fourteenth Amendment due process rights. [11/22/19 Order at 4-5.] This Court has construed Plaintiff's prayer for relief to include a request for "an accurate accounting of the amount of damages that he is personally responsible for in Module A," and a request for "restitution if more than that amount has been deducted from his account." [Id. at 5.] These constitute requests for prospective injunctive relief.

A. Post-Filing Facts

After the filing of this action, MCCC changed Plaintiff's restitution amount to reflect only property damage caused to Module A, and it offered him the opportunity to review the documentation supporting the new amount. See Taylor Decl., Exh. C (2/10/20 Letter), Exh. D (5/12/20 Letter). Plaintiff did not actually review the documentation because he did not submit a written request, as the 5/12/20 Letter directed him to do. See Taylor Decl. at ¶ 5. Plaintiff argues he should not have been required to submit a written request because his disagreement with the amount and his desire to review the

receipts are obvious. He also appears to argue the restitution amount was raised in retaliation for his grievance and lawsuit contesting the original restitution amount. [Mem. in opp. to Defs.' Motion at 4.] However, Plaintiff never sought leave to file an amended complaint: to amend his due process claims to challenge the increase in the restitution amount and the requirement that he submit a written request to review the documentation of the increased amount; or to assert a new retaliation claim.

Because Plaintiff never amended his substantive claims in this case, the requests for prospective injunctive relief in the form of limiting the restitution imposed to property damage in Module A and in the form of an accounting remain requests for relief related to Plaintiff's claims arising from his Adjustment Hearing and the result thereof. Those requests for relief are now moot because Plaintiff has already obtained, or at least had access to, the relief he sought. See, e.g., Palafox-Lugo v. Lombardo, 768 F. App'x 697, 698 (9th Cir. 2019) ("Because he has already obtained the relief he seeks, his claim is moot." (citing Abdala v. INS, 488 F.3d 1061, 1065 (9th Cir. 2007) (habeas petition moot where petitioner's release and deportation "cur[ed] his complaints" about the length of his detention))). Plaintiff's requests for prospective injunctive relief in the form of limiting the restitution imposed to property damage in

Module A and in the form of an accounting must be dismissed. Cf. MetroPCS Cal., LLC v. Picker, 970 F.3d 1106, 1115-16 (9th Cir. 2020) ("Mootness is a jurisdictional issue, and federal courts have no jurisdiction to hear a case that is moot, that is, where no actual or live controversy exists." (citation and internal quotation marks omitted)).

Thus, Plaintiff's claims in this case are limited to the alleged due process violations related to the March 28, 2019 Adjustment Hearing, without regard to the effects of the 2/10/20 Letter and the 5/12/20 Letter.

B. Claims Related to the Adjustment Hearing

This Court previously noted that Plaintiff "clearly has a protectable property interest in the funds in his prison trust account and had a right to a pre-deprivation hearing." [11/22/19 Order at 5 (citing Shinault v. Hawks, 782 F.3d 1053, 1057 (9th Cir. 2015)).] Although that observation was made at the screening stage, none of the evidence that has been presented in connection with the instant motions requires a different result. This Court therefore also concludes, for purposes of the instant motions, that Plaintiff has a protectable property interest in his trust account funds and that he is entitled to a pre-deprivation hearing.

In Shinault, the Ninth Circuit stated:

> The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." Due process "is a flexible concept that varies with the particular situation." Zinermon v. Burch, 494 U.S. 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990). Due process protections extend only to deprivations of protected interests. See Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 569–70, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
>
> . . . .
>
> Once a protected interest is found, we employ the three-part balancing test of Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), to determine whether a pre-deprivation hearing is required and what specific procedures must be employed at that hearing given the particularities of the deprivation. Brewster v. Bd. of Educ., 149 F.3d 971, 983–84 (9th Cir. 1998). The Mathews test balances three factors: (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used, and the value of additional safeguards; and (3) the government's interest, including the burdens of additional procedural requirements. Mathews, 424 U.S. at 335, 96 S. Ct. 893.
>
> Recalling that due process varies depending on the particularities of a case, every action affecting an inmate trust account does not necessarily implicate a substantial private interest under the first Mathews prong. Here, however, Shinault's interest was clearly substantial, because [the Oregon Department of Corrections] deprived him of access to a significant amount of his funds. See Quick [v. Jones], 754 F.2d [1521,] 1522–23 [(9th Cir. 1985)] ($66 charge merits pre-deprivation process); cf. Sickles v. Campbell Cnty., Ky., 501 F.3d 726, 730 (6th Cir. 2007) (withdrawals of $110 and $20 do not implicate substantial private interest).

782 F.3d at 1057.

As to the first Mathews factor, a substantial private interest was implicated because MCCC is depriving Plaintiff of a significant amount of his funds. The instant case focuses on the tension between the second and third Mathews factors. Plaintiff alleges the imposition of the same restitution amount on all riot participants constitutes an erroneous deprivation of his property, and he argues further hearings should have been held to determine the specific property damage caused by each inmate during the riot. In contrast, from Defendants' perspective, such additional procedures were not warranted and would be unduly burdensome.

This Court has recently stated:

> Although prisoners may claim the protections of the Due Process Clause, the full panoply of rights due a defendant in criminal proceedings does not apply to prison disciplinary proceedings. Wolff [v. McDonnell], 418 U.S. [539,] 556 [(1974)].[9] "[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application." Id. The Supreme Court has concluded that when a prisoner faces disciplinary charges, prison officials must provide the prisoner with: (1) written notice of

[9] This Court emphasizes that the restitution order at issue in this case was not imposed as part of the sentence for the criminal charges that were pending against Plaintiff at the time of the riot at MCCC. Thus, in determining whether Plaintiff committed misconduct during the riot and what the appropriate sanctions were, Plaintiff was not entitled to "the full panoply of rights due a defendant in" a criminal prosecution. See Wolff, 418 U.S. at 556. Plaintiff's arguments to the contrary are rejected. See, e.g., Complaint at pg. 8 ("I would like to . . . have a trial being I was pretrial.").

> the claimed violation at least twenty-four hours before the disciplinary hearing; (2) an opportunity to present documentary evidence and call witnesses "when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals"; (3) the opportunity to seek assistance where the charges are complex or the inmate is illiterate; and (4) a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action taken. Id. at 563–70.
>
> Regarding the opportunity to call witnesses, although "[j]ail officials need not provide inmates an unfettered right to call witnesses, . . . they must make the decision whether to allow witnesses on a case-by-case basis, examining the potential hazards that may result from calling a particular person." Serrano v. Francis, 345 F.3d 1071, 1079 (9th Cir. 2003). The prison officials must also eventually explain why witnesses were not allowed to testify. Ponte v. Real, 471 U.S. 491, 497 (1985).

Pitts v. Espinda, CIV. NO. 20-00431 LEK-KJM, 2021 WL 217877, at *6–7 (D. Hawai`i Jan. 21, 2021) (some alterations in Pitts).

Defendants have presented evidence that Plaintiff was provided with notice of the disciplinary charges against him more than twenty-four hours prior to the Adjustment Hearing. See Mirkovich Decl., Exh. A (bearing Plaintiff's signature, dated 3/25/19, on the notice stating the hearing was scheduled for 3/28/19). Plaintiff has not presented any contrary evidence regarding the issues of whether and when he was provided with notice of the Adjustment Hearing. Thus, even viewing the record

in the light most favorable to Plaintiff,[10] there is no genuine issue of material fact as to the first Wolff requirement. See Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.").

As to the second Wolff requirement, Defendants present evidence that, in denying Plaintiff's appeal, Ms. Kimoto observed that Plaintiff was "afforded an opportunity to appear at [his] misconduct hearing, respond to [his] misconduct, explain what happened, and provide any additional information to support [his] story." [Kimoto Decl., Exh. B.] Further, the grounds for Plaintiff's appeal indicate that Plaintiff's position was that the Adjustment Committee did not consider, *i.e.*, did not give weight to, his evidence; he did not argue that he was prevented from presenting evidence. See id. Plaintiff has not identified any evidence in this case which suggests that he was deprived of the opportunity to present evidence at the Adjustment Hearing. Even viewing the record in the light most favorable to Plaintiff, there is no genuine issue of material fact as to the second Wolff requirement.

[10] In considering Defendants' Motion, the record must be viewed in the light most favorable to Plaintiff as the nonmoving party. See Crowley v. Bannister, 734 F.3d 967, 976 (9th Cir. 2013).

By acknowledging the receipt of the hearing notice, Plaintiff also acknowledged that he understood he could have counsel appear on his behalf at the Adjustment Hearing. See Mirkovich Decl., Exh. A. Plaintiff has not presented any evidence suggesting that he was denied the opportunity to seek legal assistance prior to the Adjustment Hearing. Thus, even viewing the record in the light most favorable to Plaintiff, there is no genuine issue of material fact as to the third Wolff requirement.

As to the fourth Wolff requirement, Defendants have presented evidence that Mirkovich, on behalf of the Adjustment Committee, provided Plaintiff with written findings explaining that Plaintiff was found guilty on all charges of misconduct, "[b]ased on Reports and [his] plea," and setting forth the sanctions imposed. [Mirkovich Decl. at ¶ 7 & Exh. A.] Plaintiff was notified that he had the right to utilize the grievance process to appeal the result, [Mirkovich Decl., Exh. A,] and he utilized that process. In rejecting Plaintiff's appeal, Ms. Kimoto explained that an Adjustment Hearings Officer could rely on any evidence that the officer found reliable, and that the ultimate misconduct finding was based on staff reports. [Kimoto Decl., Exh. B.] Plaintiff has not identified any evidence which suggests that he did not receive these written findings. Thus, even viewing the record in the light most

favorable to Plaintiff, there is no genuine issue of material fact as to the fourth Wolff requirement.

Because all of the Wolff requirements were satisfied, this Court concludes that Plaintiff was provided with due process through the Adjustment Hearing and his subsequent appeal through the grievance process. Although Plaintiff may have preferred to have a hearing in which findings were made as to what damage was specifically caused by him during the riot, his interest in such a proceeding is outweighed by the governmental interests. Such a proceeding would have been unduly burdensome, insofar as it was not required by Plaintiff's Fourteenth Amendment due process rights. This Court therefore finds that there are no genuine issues of material fact for trial, and that Defendants are entitled to judgment as a matter of law as to Counts I and II, because there was no violation of Plaintiff's right to due process. Consequently, Plaintiff is not entitled to summary judgment in his favor.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Summary Judgment, filed May 21, 2020, is HEREBY DENIED, and Defendants' Motion for Summary Judgment, filed November 30, 2020, is HEREBY GRANTED. Summary judgment is GRANTED in favor of Defendants as to the remaining claims in Plaintiff's Prisoner Civil Rights Complaint, filed October 25, 2019. There being no

remaining claims in this case, the Clerk's Office is DIRECTED to enter judgment in favor of Defendants and to close this case on **March 25, 2021**, unless Plaintiff files a timely motion for reconsideration of the instant Order.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, March 10, 2021.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

BRONSON NAHALE BASCAR VS. STATE OF HAWAII, ET AL; CV 19-00584 LEK-KJM; ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT